

### REMARKS

Applicants have studied the Office Action mailed November 29, 2004 and have made amendments to the claims. It is respectfully submitted that the application, as amended, is in condition for allowance. Reconsideration and allowance of the pending claims in view of the above amendments and following remarks is respectfully requested.

#### **Double Patenting:**

The Examiner rejected claims 24-37 under the judicially created doctrine of double patenting over claims 1-9 of U.S. Patent No. 6,479,269, since the current claims 24-37 embrace the scope of claims 1-9 of said U.S. patent.

Applicants hereby submit a terminal disclaimer (along with the terminal disclaimer fee), thereby obviating this double patenting rejection.

#### **Rejection of claims 25-26 and 30-37 under 35 U.S.C. §102(e):**

The Examiner rejected claims 25-26 and 30-37 under 35 U.S.C. §102(e) as being anticipated by Yu et al. (U.S. Patent No. 6,734,009, issued 5/11/04, and also U.S. Application No. 20040023242). The Examiner states that SEQ ID NO:3 of Yu's U.S. Patent No. 6,734,009 comprises a DNA sequence having 92.3% identity to SEQ ID NO:1 of the instant application that encodes a polypeptide having 93.8% identity to SEQ ID NO:2 of the instant application, and also that SEQ ID NO:7 of Yu's U.S. Application No. 20040023242 comprises a DNA sequence having 99.7% identity to SEQ ID NO:1 of the instant application that encodes a polypeptide having 99.5% identity to SEQ ID NO:2 of the instant application.

Applicant's respectfully assert that at least Yu's U.S. Patent No. 6,734,009 does not anticipate claims 25-26 and 30-37 of the instant application since the sequence disclosed by Yu et al. have less than 95% sequence identity to the sequences of claims 25-26 and 30-37. However, to expedite prosecution, claims 25-26 have been canceled, and claims 30 and 32 have been amended so as not to depend from claims 25-26, as indicated above by the amendments to the claims, thereby making this rejection moot.

### Conclusions

By way of the above amendments, claims 25-26 have been canceled, and claims 30 and 32 have been amended. As such, claims 24 and 27-37 are presently pending.

A terminal disclaimer is submitted herewith to obviate the double patenting rejection.

In view of the above amendments and remarks, and the terminal disclaimer submitted herewith, Applicants respectfully submit that the application and claims are in condition for allowance, and request that the Examiner reconsider and withdraw the rejections. If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is invited to call the undersigned agent at (240) 453-3812 should the Examiner believe a telephone interview would advance prosecution of the application.

Respectfully submitted,

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Attachment:

- Terminal Disclaimer with fee